HOUSE BILL REPORT
HB 3008

As Reported By House Committee On:
Children & Family Services
Appropriations

Title: An act relating to mothers who have given birth to a child with drug addiction.

Brief Description: Requiring dependency investigations for infants born drug affected.

Sponsors: Representatives Cooke, Dickerson, Boldt, Wolfe, McDonald, Tokuda, Ballasiotes, Kastama, Lambert, Dunshee, Carrell, Cody, Talcott, Cole, Johnson, Wood, Carlson, Lantz, Reams, Costa, L. Thomas, Clements, Zellinsky, Alexander, Dyer, D. Schmidt, Radcliff, Conway and Anderson.

Brief History:

Committee Activity:

Children & Family Services: 2/3/98, 2/5/98 [DPS];
Appropriations: 2/7/98 [DP2S(w/o sub CFS)].

HOUSE COMMITTEE ON CHILDREN & FAMILY SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Cooke, Chairman; Boldt, Vice Chairman; Bush, Vice Chairman; Tokuda, Ranking Minority Member; Kastama, Assistant Ranking Minority Member; Ballasiotes; Carrell; Dickerson; Gombosky; McDonald and Wolfe.

Staff: Douglas Ruth (786-7134).

Background: Medical evidence suggests that prenatal drug exposure places the child at high risk of having medical, psychological and social problems after birth. Drug-affected infants are often born prematurely, have low birth weights and other significant medical problems. The long-term effects of drug exposure may lead to learning disabilities, hyperactivity, articulation and socialization problems, including anti-social behavior.

Although drug-affected infants may suffer from serious physical and emotional complications, the fact that the infant is drug-affected, by itself, is not grounds for finding that the child is a dependent child.

Currently, physicians are not required to test newborn infants to discover if the child is drug-affected or suffers from fetal alcohol syndrome.

Summary of Substitute Bill: The Department of Social and Health Services (DSHS) creates a model project with sites in the three regions with the highest incidence of births of drug-affected babies. The model project shall provide family planning and counseling services to women who give birth to drug-affected infants. The services provided shall not include pregnancy termination.

Physicians, advanced registered nurses, and midwives are required to test, or arrange to test, newborns to determine if the child is drug-affected. If the tests are positive, the physician or nurse must notify DSHS. Low-income mothers of drug-affected infants may voluntarily obtain publically funded tubal ligations for up to six months after the birth.

Once the department has received a report it must investigate. If there is reasonable cause to believe the infant is drug-affected, is in need of treatment, and the parents of the infant cannot provide adequate care the department will take custody of the child. The department will retain custody until a court assumes custody or until the department determines that the parents can care for the infant. The infant shall be placed in a birth facility or pediatric care program and provided services while in the department's custody.

After investigating the report, the department may file a dependency petition if appropriate. If the department does not file a petition, it will refer the mother to a model project or to a chemical dependency treatment program. As part of treatment, the department will make available pharmaceutical birth control services, information, and counseling.

For the first drug-affected infant reported, the mother may avoid a dependency order by entering into an agreement with DSHS. As part of the agreement, the mother must obtain chemical dependency treatment or enroll in the model project. The mother must also stipulate to the fact that the child is a dependent child. If the mother enters into an agreement, the department will request that the court defer entry of a dependency order for as long as the mother remains in treatment or the model project.

For the second birth of a drug-affected infant reported, DSHS may request the court to proceed with the dependency on the first infant if it has been deferred. DSHS must investigate and file a dependency on the second child, absent compelling reasons to the contrary. If compelling reasons exist, the department will refer the mother to the model project or to a treatment program.

As with the first child, a mother may avoid the filing of a dependency petition by entering into an agreement with DSHS. The mother must agree to participate in in-patient chemical dependency treatment or the model project and submit to medically appropriate pharmaceutical birth control. The birth control is to continue until the court dismisses the dependency petition or finds that the birth control is no longer medically appropriate. Upon an agreement, the department will request that the dependency

petition regarding the second infant be deferred for as long as the mother abides by the agreement. The mother must also stipulate to the fact that her child is a dependent child.

For the third, and any subsequent births of drug-affected infants, DSHS will request the court to enter a dependency order on all drug-affected children if dependency orders have been deferred. If dependency orders are not pending, DSHS will file a dependency petition for all other drug-affected children in the family. The court will order the mother evaluated by a chemical dependency specialist to determine if involuntary commitment for drug treatment is warranted. Birth of a third drug-affected infant also creates a presumption that termination of parental rights is in the best interest of the child.

If a dependency petition has been deferred because a woman has entered into an agreement with the department, a court cannot dismiss the petition until the mother demonstrates by clear and convincing evidence that she has remained drug free for 12 consecutive months and can provide for the child's welfare. If a dependency petition has been entered and a child is removed from the home, the child may not be returned until the mother has successfully completed an inpatient chemical dependency and after-care program or the petition is dismissed.

The department is required to define "drug-affected infant." The definition is to include infants affected by alcohol.

DSHS must report annually on tubal ligations offered and accepted, number of reports filed by physicians, and the pharmaceutical birth control services utilized. DSHS must study whether the mothers of fetal alcohol syndrome (FAS) infants should be included in the program.

Substitute Bill Compared to Original Bill: Registered nurses and midwives are added to physicians as professional who must test, or arrange for testing of infants that appear to be drug-affected. They must report to the department infants that are drug-affected.

The department, rather than the physician, is given the authority to take custody of the infant and place the infant in a birthing facility or pediatric care program. The circumstances under which the department could take custody of the infant are outlined.

The requirement that any pharmaceutical birth control required after the birth of the mother's second drug-affected child be administered not less than once every 30 days is eliminated.

The time a mother must remain drug and alcohol free to have a dependency dismissed is reduced from 36 to 12.

The model project is limited to the three administrative regions with the highest incidence of births of drug-affected infants.

The definition of "drug-affected" is expanded to include infants affected by alcohol. A definition of "family planning" is added.

A study by the Washington State Institute for Public Policy (WSIPP) to determine the effectiveness for the model project is eliminated.

Appropriation: None.

Fiscal Note: Requested on February 3, 1998.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed, except for Sections 1 through 8 and 10 through 12 of this act take effect July 1, 1999.

Testimony For: This is a needed change for a serious problem. Performance reports of the First Steps Plus program in Yakima show that intervention programs, such as the model project described in the bill, do reduce the birth rate of drug-affected infants. Offering birth control to the mothers also is an effective means for reducing this birth rate. Mothers of these children need to be sent a strong message, although initiating the involuntary commitment process after the birth of a woman's third drug-affected child is not valuable. Committed women are separated from their child. There is also little funding for this type of treatment. Because filing the actual commitment petition remains in the discretion of the chemical dependency specialist, in actuality petitions will not be filed. Similarly, requiring that a mother remain drug-free for 36 months is unrealistic. Drug addictions are relapse diseases. The bill provides a good mix of coercion and treatment. However, it needs to apply to babies affected by alcohol abuse. The long-term impact on babies suffering from fetal alcohol syndrome can be much worse than those who are drug-affected. The Department of Health supports the bill.

Testimony Against: It is not appropriate to require physicians to test infants to determine whether they are drug-affected. There are no uniformly accepted tests or protocols for when to conduct tests. Physicians should not be placed in the position of detaining an infant against a mother's wishes. This legislates a discharge procedure. Whether a child needs to be discharged is a decision for the child's physician. There are also potential liability problems with this process.

Testified: Beth Dannhardt, Washington State Coalition on Substance Abuse, also Solutions Group (pro); Vicky McKinney, parent (pro with concerns); Jocie DeVries, parent (pro with concerns); Jerry Sheehan, ACLU-W (con); Dr. Maxine Hayes, Ken Stark, and Jennifer Strus, panel from Department of Social and Health Services (pro with issues); and Margaret Casey, Washington State Catholic Conference (pro with one concern).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Children & Family Services. Signed by 22 members: Representatives Huff, Chairman; Alexander, Vice Chairman; Clements, Vice Chairman; Wensman, Vice Chairman; H. Sommers, Ranking Minority Member; Doumit, Assistant Ranking Minority Member; Carlson; Chopp; Cody; Cooke; Crouse; Grant; Kenney; Kessler; Lisk; McMorris; Parlette; Poulsen; Regala; Sehlin; Sheahan and Tokuda.

Staff: Beth Redfield (786-7130).

Summary of Recommendation of Committee on Appropriations Compared to Recommendation of Committee on Children & Family Services: The bill is made null and void if not referenced in the budget.

Appropriation: None.

Fiscal Note: Requested on February 3, 1998.

Effective Date Section 9 of the bill takes effect 90 days after adjournment of session in which bill is passed. The rest of the bill takes effect July 1, 1999. However, the bill is null and void unless funded in the budget.

Testimony For: This bill has been worked with stakeholders over a three-year period. Seeing the impacts of drug and alcohol abuse on children in therapeutic child care dramatizes the need for the services put in place by the bill.

Testimony Against: None.

Testified: Representative Cooke, prime sponsor.